



Texas Department of Insurance
Division of Workers' Compensation
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BENEFIT REVIEW CONFERENCE (BRC) INFORMATION FOR INSURANCE CARRIERS

LIABILITY ISSUES: Although an injured worker must show that an injury occurred on the job, the carrier should be prepared to present information to support their denial of a claim because the injured worker was intoxicated at the time of the injury, the injury was the result of horseplay, the injured worker's intention to injure his/herself or another person, another person intending to injure the injured worker, an injury related to an off-duty (recreational/social/athletic) activity, or an act of God. A party should be prepared to discuss the following information at a BRC on a liability dispute.

Definition of Terms

"Injury" means damage or harm to the body, including infections from the injury. See [§401.011\(26\)](#).

"Compensable Injury" means an injury in the course and scope of employment. See [§401.011\(10\)](#).

"Course and Scope of Employment" means an activity performed by the injured worker originating in the work of the employer. See [§401.011\(12\)](#).

"Exceptions" listed under [§406.032](#), provides specific situations that would relieve the insurance carrier for liability of a worker's compensation claim.

"Definition of Intoxication" is provided under [§401.013](#).

"Alcoholic Beverage" is defined by [Section 1.04, Alcoholic Beverage Code](#).

"Alcohol Concentration" is defined by [Section 49.01, Penal Code](#) (for injuries on or before 9/1/99) or by [Section 49.01\(2\), Penal Code](#) (for injuries on or after 9/1/99).

"Controlled Substance" or "Controlled Substance Analogue" is defined by [Section 481.002, Health and Safety Code](#).

"Dangerous Drug" as defined by [Section 483.001, Health and Safety Code](#).

"Abusable Glue or Aerosol Paint" as defined by [Section 485.001, Health and Safety Code](#).

"Required Medical Exam" is an exam required by the Division to address the appropriateness of health care or other similar issues. See [§408.004](#).

Division Forms

- DWC-1, "Employer's First Report of Injury or Illness" (paper copy if filed electronically).
- DWC-21, PLN 1 or PLN 11, "Carrier's Notice of Disputed Issue(s) and Refusal to Pay Benefits".
- DWC-45, "Request for a Benefit Review Conference Interim", if conference was requested by the insurance carrier.

Medical Records

- Emergency room reports.
- Doctor's narrative report resulting from a Division or Carrier's required medical examination, if any.
- To raise an **"alcohol or drug intoxication"** dispute, there must be medical information that establishes intoxication in order to shift the burden to the injured worker to prove his/her sobriety at the time of the injury (i.e., blood/drug test results, toxicology report).
- Medical Release form – to obtain any additional medical records related to treatment provided outside of a workers' compensation claim or for a previous injury(s).

Additional Information

- Transcribed Statement(s) – if the adjuster created a telephonically recorded interview with injured worker, supervisor(s), and/or other co-worker(s), a transcribed copy of the interview should be available.
- Witness Statements – while not all injuries are witnessed, it is beneficial to present the names and/or statement of any coworkers who support the carrier's position that the claimed injury is not work related.
- To raise a **"horseplay"** dispute, there must be information that shows the injured worker willfully engaged in an act of horseplay and the horseplay was a producing cause of the claimed injury.
- To raise an **"act of God"** dispute, there must be information to show that the injured worker's employment did not expose him/her to a greater risk of injury than the general public; the term implies the intervention of some cause not of human origin and not controlled by human power (i.e., tornado, lightning, etc.).
- To raise a **"willful intention to injure him/herself or unlawfully injure another person"** dispute, there must be information (i.e., police report, witness statements) to show the injury did not occur in the course and scope of employment and the injured worker willfully intended to injure his/herself or another person.
- To raise an **"act of a third person intending to injure the injured worker"** dispute, there must be information (i.e., witness statements, police report) to show that the claimed injury resulted from personal animosity by a third person towards the injured worker, unrelated to the employment.
- To raise an **"off-duty (recreational/social/athletic) activity"** dispute, there must be information to show the activity was not part of the normal work activity, nor was there a reasonable expectancy of or requirement by the employment.

Exchange of Information

- Must be exchanged with DWC and other parties per [Rule 141.4](#).
- Must be exchanged no later than 14 days prior to a BRC (5 days if BRC was expedited).
- Bring information that is obtained **after** the exchange deadline to the conference in sufficient copies for filing and exchanging at the conference.